



Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

JAMES M. SMITH
DIRECT (202) 508-6688
jamesmsmith@dwt.com

SUITE 450
1500 K STREET NW
WASHINGTON, D.C. 20005-1272

TEL (202) 508-6600
FAX (202) 508-6699
www.dwt.com

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BY ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte*
WC Docket No. 05-68

Dear Ms. Dortch:

This *ex parte* written communication is submitted on behalf of Arizona Dialtone Inc. (“ADI”) with respect to its pending Petition for Reconsideration in the above-referenced proceeding. This letter addresses *ex parte* letters filed in this docket on January 25, 2007 by Verizon and on January 22, 2007 by Level 3 Communications, LLC (Level 3), both of which memorialized recent presentations to Commission staff.¹

Verizon’s *ex parte* presentation and letter pressed its contention that “local-dialed prepaid calling card services are properly considered Feature Group A services, and should be ordered and provisioned as such.” As ADI and other parties to this proceeding have demonstrated in detail,² this Verizon proposal is the purest and most transparent kind of exclusionary, self-serving solution to the problem identified in this proceeding. Simply put, Verizon’s proposal would force virtually every prepaid card service operating in Verizon territories to use Verizon’s monopoly services, and would drive all competition by CLECs and intermediate carriers from this market sector. It is notable that Level 3’s new *ex parte* letter confirms this fatal

¹ Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, dated Jan. 25, 2007; letter from John T. Nakahata, counsel for Level 3, to Marlene H. Dortch, FCC, dated Jan. 22, 2007.

² See, e.g., ADI *ex parte* letter dated Nov. 3, 2006, at 3-4; ADI Reply Comments, filed Oct. 23, 2006, at 12-13; Level 3 *ex parte* letter, *infra* note 3.

anticompetitive flaw in Verizon's proposal.³ But it is even more notable that Verizon itself, in an earlier *ex parte* in this docket, took a contrary position, and indeed one that urged substantially the same relief that ADI seeks in this Reconsideration proceeding. In a letter filed in May of last year, Verizon did not advocate that prepaid card services be forced to use its tariffed Feature Group A service, but only that their use of "DID" and other forms of local number routing "should be treated *similarly*. In other words, an intermediary LEC such as Level 3 must identify the prepaid calling provider to the originating LEC, so that the originating LEC may properly bill the calling card provider for access." Verizon continued:

Without information from the intermediary carrier identifying a particular local telephone number as a connection to a particular interexchange carrier, calls to that local number will appear to the originating LEC like any other call to the intermediary's end users. The originating LEC will have no information indicating that it should bill access to any carrier for what would otherwise appear to be a "local" call. If intermediary carriers expect originating LECs to bill the calling card provider for access, the intermediary carrier must provide information identifying the interexchange carrier to be billed, and the volume of minutes to be billed, *as is done with* Feature Group A.⁴

Verizon was right then — accurately characterizing the problem and suggesting a practical solution quite similar to that proposed by ADI — and it is wrong now. As ADI has pointed out,⁵ the large ILECs' Feature Group A product is, to be sure, an appropriate vehicle for prepaid card providers to offer local number access for long-distance calling. But it is *their* vehicle, unavailable to competitors; it manifestly should not be the exclusive, mandatory vehicle, for such a mandate would replace one evil with an even greater one, by grievously harming competition in both prepaid calling and competitive carrier services.

While Level 3's new *ex parte* correctly rejects Verizon's "compelled FGA" proposal, its own proposal is to do nothing, even though it recognizes that prepaid card providers' use of local-number routing is allowing them to utterly circumvent the Commission's *Order* and new

³ See Level 3 letter, *supra* note 1, at 2 ("this proposal actually amounts to an attempt to grab business from competitive intermediate carriers by reverting to an outdated access model designed for a one-carrier monopoly setting. Only originating LECs can offer Feature Group A services, meaning that this proposal would require prepaid calling card providers to abandon arrangements with competitive intermediate LECs providing DID service and sign on instead with originating LECs. The proposal is nothing more than an effort by originating LECs to pilfer customers from intermediate LECs, and it completely fails to address how to proceed in the current, multi-carrier environment. The Commission should reject it.")

⁴ Verizon *ex parte* letter dated May 22, 2006, at 1-2 (emphasis added).

⁵ See ADI *ex parte* letter, filed Nov. 3, 2006, at 3-4; ADI Reply Comments at 12-13.

reporting rules in this proceeding.⁶ This position too is self-serving, for a different reason: Level 3 profits from the *status quo* by being a local DID provider itself.⁷ Because Level 3's *ex parte* mischaracterizes ADI's proposal and/or otherwise dissembles in so many particulars, ADI submits herewith a point-by-point rebuttal of Level 3's objections to its Petition:

- *"While Arizona Dialtone's petition and reply comments attempt to muddy the waters, the FCC's rules place responsibility for access charges on the interexchange carrier, not another LEC. Therefore, the Commission should deny Arizona Dialtone's request for reconsideration."*

This is a *non sequitur*, in that the assertion does not lead to the conclusion. More importantly, there is nothing "muddy" about ADI's clearly stated position: "ADI **agrees** with both Level 3 and Verizon that the current access charge system imposes the duty to pay access charges on IXCs with respect to long distance calls, and does not impose access payment obligations on LECs or CLECs. . . [T]he Commission should clarify that the party responsible for paying access charges to the originating LEC when local access is used to place a calling card call is the IXC, *i.e.*, the long distance calling card provider or its underlying IXC that purchases the DID access."⁸ ADI fails to understand Level 3's point, much less its conclusion.

- *"Contrary to the unsupported assertions that appear in its reply comments, Arizona Dialtone's proposals would impose significant compliance burdens on intermediate LECs (like Level 3) that provide DID service, and, as Arizona Dialtone acknowledges, would require disclosure of competitively sensitive information to a competitor. Only a small subset of DID customers use their DID lines for prepaid calling card services, and intermediate LECs currently have no reason or method to distinguish them from all other DID customers."*

ADI's proposed reporting requirements are straightforward and not unduly burdensome; indeed, the greater burden is placed on the requesting originating LEC, not the intermediate LECs. As ADI explained:

First, the obligation would only be activated upon a request by the originating LEC to the intermediate LEC, accompanied by a list of numbers that the requesting LEC has good-faith reason to believe are being used for prepaid calling access. Then, the intermediate LEC would simply cross-reference this list against its customer base. The intermediate LEC in many cases will immediately know

⁶ *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order in WC Docket No. 05-68, 21 FCC Rcd 7290 (rel. June 30, 2006) ("Order"), and Appendix A thereto (adopting new 47 C.F.R. §§ 64.5001).

⁷ See Level 3 letter at 2 (referring to "intermediate LECs (like Level 3) that provide DID service").

⁸ ADI Reply Comments at 5-6 (emphasis added).

whether its customer is a prepaid card provider or wholesaler of telecommunications services. In any instance of doubt, the intermediate LEC could simply dial the local access number to determine whether such is the case. And if it knows or determines that the customer is not using the local number for prepaid access, ADI's Petition explicitly contemplates that the DID provider/intermediate LEC may object to the originating LEC's request with respect to those numbers.⁹

Thus, under ADI's proposal the intermediate LEC would have no burden of distinguishing a subset of DID numbers subject to access from the universe of its DID numbers; that burden would rest with the originating LEC. The only duty ADI's proposal would give the intermediate LEC is that of identifying those customers who should pay access for a particular DID, and passing through information received from the prepaid carriers pursuant to the rules, which are necessary elements of identifying the IXC that Level 3 agrees is the access payor.

ADI further noted in its reply comments—with support—that the Commission adopted very similar tracking and reporting requirements for intermediate carriers in its payphone compensation docket,¹⁰ and that the Commission could specify, as it has in analogous contexts, that any disclosed information may be used solely for the purpose of access billing, and that the recipient LEC may not use it for any other purpose.¹¹ Level 3 has provided no support for its contention that originating LECs are not entitled to, or do not need, this information.

- *“There is no justification for this invasive and burdensome proposal, and the Commission should reject it.”*

On the contrary, the justification is evident: Level 3 skirts entirely the central and obvious truth that an originating LEC cannot identify, bill and collect access for prepaid calls—the very purpose of the June 30 *Order* and the reporting rules—without such reporting. Level 3's argument is a classic case of straining hyperbole to make something very easy sound very difficult, without actually demonstrating what is so difficult about it.

⁹ *Id.* at 7-8.

¹⁰ *Id.* at 8, citing *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996* (Report and Order in CC Docket No. 96-128), 18 FCC Rcd 19975 (2003) (“2003 Payphone Order”), *Reconsideration*, 19 FCC Rcd 21457 (2004). See 47 C.F.R. §64.1310.

¹¹ See *id.* at 10, citing *2003 Payphone Order*, 18 FCC Rcd 19975, 20003-04 n. 153 (“We require PSPs to use this additional information for compensation purposes only, and prohibit all entities from sharing such information with their internal divisions that compete with the interexchange carriers”). See also 47 U.S.C. § 222 (b): “A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.”



- *“The implementation of changes to the SMS database permit [sic] DID sellers such as Level 3 to largely prevent responsible organizations (resp. orgs.) from pointing toll-free numbers at a carrier’s DID’s without its consent. While this blocking is not perfect, it is a substantial improvement by the industry, and, when implemented by DID sellers, eliminates much of the problem raised by Arizona Dialtone.”*

Not at all, for the very reason stated by Level 3 itself: Only it and similar “DID sellers” have the ability to implement such blocking—which is no solution at all, since Level 3 is resisting any requirement to do so, or for that matter to do anything to prevent the practice of masking long distance calling through the use of the DIDs that it sells.¹²

- *“Level 3 reiterated its willingness to pass on to originating carriers information that it receives from prepaid calling card providers or other intermediate carriers serving prepaid calling card providers.”*

Again, this is cold comfort, since Level 3 makes unerringly clear that it opposes any such requirement, much less that it will seek that information from its DID customers. Even assuming *arguendo* that Level 3 would voluntarily pass through PIU factor information from its prepaid customers, it is essential that it also report the identity of its customer, for otherwise the PIU information by itself would be useless. Absent such flow-through of reporting, the information needed for an originating LEC to bill access will never reach it—to the profit and advantage of the buyers and sellers of the DIDs, but in total derogation of the June 30 *Order*.

In sum, notwithstanding Level 3’s and Verizon’s self-serving dissembling, the *Order* will be rendered a dead letter unless originating LECs and CLECs are enabled to identify and bill access charges for long-distance prepaid card calls. Only ADI’s proposal¹³ accomplishes that

¹² Of equal importance, many DID-routed calls do not touch the SMS/800 network; indeed, as ADI has shown, many or most are directly dialed by the caller (*e.g.*, by using a local access number provided on the back of the prepaid card, or through use of an automated 800 readback system wherein the caller dials a toll-free number and is supplied a local DID number serving his area code). In all such cases SMS/800 blocking is useless.

¹³ In its January 18, 2007 *ex parte* presentation, ADI submitted proposed rule revisions.



goal *without* destroying the ability of either prepaid card providers or competitive intermediate carriers to participate in this market sector.

Respectfully submitted,

DAVIS WRIGHT TREMAINE LLP

A handwritten signature in black ink, appearing to read 'James M. Smith', written over the printed name.

James M. Smith
Counsel for Arizona Dialtone Inc.

cc: Thomas Navin
Donald Stockdale
Marcus Maher
Michelle Carey
Scott Bergmann
Ian Dillner
John Hunter
Albert Lewis
Jennifer McKee
Lynne Engledow
Best Copy and Printing, Inc.